

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHRISTINE MOORE,	:	
	:	NO. 1:04-CV-00521
Plaintiff	:	
	:	
	:	ORDER
v.	:	
	:	
	:	
UNITED STATES POSTAL SERVICE,	:	
et. al.,	:	
	:	
Defendants	:	

Proceeding pro se, Plaintiff Christine Moore ("Moore") filed a complaint against her former employer United States Postal Service ("Postal Service") and Postal Service employees (hereinafter "individual Defendants"), on August 9, 2004, averring that she was subjected to gender and racial discrimination pursuant to 42 U.S.C. § 2000e (doc. 2). On December 17, 2004, the assigned Magistrate Judge issued an Order to Show Cause as to why Plaintiff's Complaint should not be dismissed for failure of service (doc. 11). Specifically, Plaintiff served her Complaint upon the individual Defendants at their places of employment, but failed to provide proper service by registered or certified mail to the United States Attorney for the Southern District of Ohio ("U.S. Attorney") or an employee designated by the U.S. Attorney, or the civil process clerk at the office of the U.S. Attorney as required by Rule 4(i)(1)(A) (doc. 11). In addition, Plaintiff failed to

send a copy of the summons and complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia as required by Rule 4(i)(1)(B) (Id.).

On January 10, 2005, Plaintiff's appointed counsel entered an appearance on her behalf, and asked the assigned Magistrate Judge for additional time to perfect service on Defendants pursuant to the discretion allowed under Civ. R. 4(m) (doc. 12). Subsequently, the assigned Magistrate Judge issued an Order that Plaintiff had until February 14, 2005, thirty days after the Order was issued, to perfect proper service on the appropriate Defendants (doc. 13).

On February 25, 2005, the Magistrate Judge issued his Report and Recommendation (doc. 15). The Magistrate Judge had no evidence that proof of service had been filed with the Court (Id.). Therefore, he recommended that Plaintiff's Complaint be dismissed with prejudice for lack of prosecution and failure to abide by a Court order (Id.).

Thereafter, Plaintiff filed a Motion for Reconsideration, on March 1, 2005, averring that Plaintiff remedied all outstanding service issues and is now in compliance with all requirements of Civ. R. (i) (doc. 17). Moreover, Plaintiff contended that both the U.S. Attorney and the United States Attorney General ("U.S. Attorney General") had been properly served (Id.). Plaintiff also

averred that the U.S. Attorney has had actual notice of this lawsuit since September 2004 (Id.). Therefore, Plaintiff believes that, after properly complying with the assigned Magistrate Judge's Order and proving that any previous noncompliance was inadvertent, her case should be allowed to proceed on its merits (Id.).

Upon de novo review, the Court finds Plaintiff's reasons for failure of service excusable. Initially, Plaintiff erroneously relied on Civ. R. 4(d) in attempting to provide service upon the U.S. Attorney, but, subsequently, she correctly relied upon Civ. R. 4(i), and properly served both the U.S. Attorney and U.S. Attorney General with her Complaint. The Court does not find Defendants to have suffered prejudice as a result of Plaintiff's error. Plaintiff attempted in good faith to properly serve Defendants within the period of time provided by the assigned Magistrate Judge, and the U.S. Attorney actually had notice of this matter before the Order to Show Cause was issued. In light of the facts that her previous noncompliance was inadvertent and Defendants were not prejudiced in regards to this matter, Plaintiff's Motion for Reconsideration is taken in good faith.

For the foregoing reasons, the Court GRANTS Plaintiff's Motion for Reconsideration (doc. 17), REJECTS the Magistrate Judge's Report and Recommendation (doc. 15), and REMANDS this

matter for further proceedings in accordance with this Order.

SO ORDERED.

Dated: August 23, 2005

/s/ S. Arthur Spiegel

S. Arthur Spiegel

United States Senior District Judge